

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE Southern DISTRICT OF New York

CASE NO.: ##### 19-cr-395(PKC)

UNITED STATES OF AMERICA,

vs.

Ramon Ramirez

Defendant

The ABA Model Rules do not apply in this district. The New York Rules of Professional Conduct apply. See Local Civil Rule 1.4(b)(5). The New York Rules do not contain ABA Model Rule 1.6(d).

MOTION FOR AN ORDER PURSUANT TO ABA RULE 1.16(d) DIRECTING COUNSEL TO SURRENDER PAPERS RELATED TO CRIMINAL CASE

Applicant DENIED

Comes Now, ## Ramon Ramirez, the Defendant pursuant to American Bar Association's Rules of Professional Conduct ... 1.16(d) or Rule 47 FRCP and does hereby moves for an order directing court appointed/retained counsel to surrender papers related to this criminal case. Because counsel upon the termination of his/her representation of Defendant, failed to surrender papers or property to which the Defendant is entitled, notwithstanding Defendant's repeated requests for him/her to provide the following documents checked below:

without prejudice.

SO ORDERED

USRJ

4-12-23

(Check Those Documents Which Counsel Failed To Provide)

<input checked="" type="checkbox"/> Grand Jury Transcripts.	<input checked="" type="checkbox"/> Jury Verdict Form
<input type="checkbox"/> Indictment or charging instruments.	<input type="checkbox"/> Post Trial Motion(s)
<input type="checkbox"/> Search/Arrest warrant(s) and Supporting Affidavits.	<input type="checkbox"/> Presentence Report
<input type="checkbox"/> Preliminary Hearing Transcripts.	<input type="checkbox"/> Sentencing Hearing Transcripts.
<input checked="" type="checkbox"/> Pretrial Motion Hearing Transcripts	<input type="checkbox"/> Judgment Sentence & Commitment Orders
<input type="checkbox"/> Plea Hearing Transcripts	<input checked="" type="checkbox"/> FD-302s
<input checked="" type="checkbox"/> Written Plea Agreement	<input type="checkbox"/> Appellate Briefs
<input checked="" type="checkbox"/> Trial Transcripts	<input type="checkbox"/> Appendix to Appellate Briefs
<input type="checkbox"/> Jury Instructions	<input type="checkbox"/> Other: _____

Mailed to Ramirez 4/12/2023

ARGUMENT

American Bar Association's Rules of Professional Conduct 1.16(d) states that:

(d) In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred

The Courts have interpreted Rule 1.16(d) literally. See, e.g., In re Douglass, 859 A.2d 1069, 2004 D.C. App. LEXIS 520 (2004) ("Failure to release client files or papers. - Upon an attorney's termination of representation of clients, he violated ... R. 1.16(d) by refusing to surrender their papers and property unless they agreed to sign a malpractice liability release..."); In re Brown, 912 A.2d 568, 2006 D.C. App. LEXIS 638(2006) ("Attorney violated R. Prof. Conduct 1.16[(d)] by failing to take timely steps to the extent practicable to protect his client's interests, such as surrendering papers and property to which the clients were entitled, in connection with the termination of their representation."); " In re Weideman, 327 Fed. Appx. 215; 2009 U.S. App. Lexis 9703(2009 CA2)(The "Respondent [attorney] has engaged in the following professional misconduct: [by] Failing to return papers and property to which the client is entitled upon termination of representation, in violation of MRPC 1.16(d)"); Hudak v. Times Publ'g Co., 534 F.Supp.2d 546(W.D. Penn. 2008)("Rule 1.16(d) provides, in relevant part: Upon termination of representation, a lawyer shall surrender[] papers and property to which the client is entitled..."); In re Am. Metrocomm Corp., 274 B.R. 641 @ 657(D.Del. 2002 ("Louisiana Rule of Professional Conduct 1.16(d) provides that, upon termination, a lawyer must do that which is reasonably practicable to protect his client's interest. This includes 'surrendering papers and property to which the client is entitled.'"); Greig v. Macy's Northeast, 1997 U.S. Dist. Lexis 22841; No. 95-1259 (D.NJ 11/19/1997)"The conduct of attorneys admitted to practice before this court is governed by the American Bar Association's Rules of Professional Conduct ... 1.16(d) states in

pertinent part: (d) Upon termination of representation, a lawyer shall ... surrender[] papers and property to which the client is entitled ..."); United States v. Oakley, 2008 U.S. Dist. Lexis 78721(E.D. Tenn. 2008)("In cases such as this, where an attorney is required, for whatever reason, to cease his representations of a client, [Rule 1.16(d)] further state that: Upon termination of the representation of a client, a lawyer shall ... promptly surrender[] papers and property of the client and any work product prepared by the lawyer for the client ...") Gjeci v. Gonzales, 451 F.3d 416, @ 422(2006 CA7)("To be sure, a lawyer's professional responsibility upon withdrawal includes... delivering to the client all papers and property to which the client is entitled. MODEL RULES OF PROF'L CONDUCT R. 1.16(d)(2004). None of this happened here, as we simply cannot understand why Baranyk apparently made no effort to have Gjerci's documents examined then improperly retained them for over two years. Gjerci may have had a colorable claim for ineffective assistance counsel, had he followed the procedures..."); United States v. Cannon, 383 F.Supp.2d 1075(C.D. Ill 2005)("The court held that counsel clearly violated Rule 1.16(d) by failing to turn over defendant's files since counsel's explanations for the failure were demonstrated to be patent lies"); United States v. Osborne, 2006 U.S. Dist. Lexis 16219(E.D. Ak 2006)("The Court assumes and expects that Mr. Adams will comply with Rule 1.16(d)"); and Butler v. United States, 2007 U.S. Dist. Lexis 86366(D. Idaho 2007)("An attorney shall surrender 'papers and property to which the client is entitled....'")

RELIEF SOUGHT:

Wherefore, based upon the foregoing reasons or authorities defendant prays that this court will direct his appellate/trial counsel to supply him with the information that he/she failed to provide him with as indicated in the boxes checked above.

By:

Ramon A. Ramiser

Print Your Name Here:

Ramon Ramiser

CERTIFICATE OF SERVICE

I Hereby Certify that a true and correct copy of the foregoing MOTION FOR AN ORDER PURSUANT TO ABA RULE 1.16(d) DIRECTING COUNSEL TO SURRENDER PAPERS RELATED TO CRIMINAL CASE has been sent via U.S. Mail postage prepaid to;

Mathew Kluger & Beverly Van Ness

on 3 / 13 / 2023

By Ramon A. Ramirez
(Sign Your Name Above)

Print Your Name Here:

Address:

City:

State and Zip Code:

Ramon Ramirez 86958-054
FCC-Beaumont-Med.
P.O. Box 26040
Beaumont, TX 77720-6040

* See, e.g. USDOJ v. Julian, 486 U.S. 1, 108 S.Ct. 1606, 100 L.Ed.2d 1(1988)("With respect to a federal presentence investigation report on a criminal defendant who has been adjudged guilty; Exemption 3 of the ... (FOIA)(5 USCS § 552(B)(3))-which exempts from FOIA disclosure certain materials specifically exempted by other statutes-permits" does not apply "when the individual requesting discovery of the [presentence investigation report] is the subject of the report.")